HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

-

-

-

Writ Petition No. 9217 of 1997

Between

-

M.A.Gaffar ..Petitioner

AND

The District Cooperative Officer/ Joint Registrar, Mahaboobnagar and others ..Respondents

-

-

-

:: JUDGMENT ::

11.4.2007

HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

-

Writ Petition No. 9217 of 1997

The present writ petition has been instituted seeking the following relief:

> "For the reasons stated in the accompanying affidavit, this Hon'ble Court may be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of writ of mandamus directing the respondents to pay an amount of Rs.1,40,571/- along with 24% interest forthwith towards the arrears of salary and retirement benefits which are due to the petitioner and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

The claim has been rested on the ground that inspite of rendering services to the second respondent and retiring there from, the second respondent had not paid the salaries and allowances for certain period and retirement gratuity in all amounting to Rs.1,07,897/-.

The second respondent had filed its counter affidavit and pointed out that the petitioner is in all eligible to receive a total amount of Rs.46,195/-. The justification offered by the second respondent for not releasing these monies which are otherwise considered to be due to the petitioner, was that there are certain audit objections raised pointing out that more than a sum of Rs.2.90 lakhs has got to be

properly accounted for by the deceased writ petitioner and in those set of circumstances, the money which is otherwise due and liable to be paid to the writ petitioner was not released.

This apart, the learned counsel for the second respondent had also raised an objection that the writ petition is not the proper remedy to enforce any of the obligations arising out of the contract of employment with the second respondent inasmuch as such obligations emanate from the special bye laws framed by the society which are otherwise not enforceable. The learned counsel for the second respondent had also placed reliance upon a judgment rendered by the Full Bench of this Court in **Sri Konaseema Cooperative Central Bank Ltd., Amalapuram v. N.Seetharama Raju**[1] wherein at para 49, it was held that the remedies available under Andhra Pradesh Shops and Establishments Act or the Industrial Disputes Act cannot be bypassed and the writ petition cannot be maintained for enforcing the obligations arising out of the special bye laws.

In this view of the matter, the learned counsel for the writ petitioner seeks permission for the writ petitioners to pursue the remedies available and open to them either under the Andhra Pradesh Shops and Establishments Act or the Gratuity Act, as the case may be. Since there are disputed questions of fact, I consider that the writ petition is not appropriate remedy and the liberty as sought for by the counsel for the writ petitioners is retained for the writ petitioners. With this, the writ petition is dismissed.

If the writ petitioners raise such claim within next six weeks, the claim is liable to be entertained, for, they have been pursuing the present writ petition.

NOOTY RAMA MOHANA RAO.J.

11.4.2007
psr

[1] AIR 1990 AP 171